

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

FT EXPRESS,

Plaintiff, :

Case No. 3:08-cv-340

-vs-

Magistrate Judge Michael R. Merz

:

BARKO ENTERPRISES, et al.,

Defendants.

DECISION AND ORDER

This case is before the Court on Motion of Defendant Thomas Barko for Judgment on the Pleadings (Doc. No. 132). The basis of the Motion is the disallowance by the United States Bankruptcy Court of Plaintiff's claims, as shown by the Order of The Honorable Guy R. Humphrey in Case No. 3:09-bk-37810 (Doc. No. 101 in that case; filed November 17, 2011).

Judge Humphrey's disallowance of the claim was pursuant to a compromise under which "• Mr. Barko will provide to Fujitrans USA through its counsel, Mr. Scaccia, his individual 2008, 2009 and 2010 federal, state and local tax returns within 60 days." (Motion, Doc. No. 132, PageID 802). In its Memorandum in Opposition, Plaintiff noted that those documents had not yet been produced, despite that's being a condition of the compromise. Defendant Barko has filed no reply memorandum to contest that factual assertion and the time within which he could have done so under S. D. Ohio Civ. R. 7.2 has expired.

Accordingly, Defendant has not established the claimed defense and the Motion for Judgment on the Pleadings is denied.

Plaintiff's Motion for Reconsideration (Doc. No. 135) is moot.

February 1, 2012.

s/ **Michael R. Merz**
United States Magistrate Judge